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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1940

No. [illegible] 88

HUNTER AND CO., INC., AN ILLINOIS CORPORATION
Petitioner,

vs.

VILLAGE OF BELLWOOD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS, AND BRIEF IN SUPPORT THEREOF.

JOHN F. VOIGT,
Counsel for Petitioner.

MARSHALL S. HOWARD,
Of Counsel.

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1. Under the law, as it existed at the time the special assessment bonds in question were issued, no statute existed in the State of Illinois permitting the extension of special assessments or the refunding of special assessment securities	9
2. In 1933 the legislature enacted Section 86A granting the right to extend special assessments and refund special assessment securities and attempted to make the statute retroactive; if a new statutory enactment confers any rights or privileges upon one class to the detriment of another such statute is unconstitutional	9-10

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SUMMARY OF ARGUMENT (continued):

3. According to the evidence herein foreclosure of the special assessment liens herein is inevitable and foreclosure after an extension and refunding under Section 86A would work a marked discrimination between the bondholders 10-11

4. Return to the bondholders whose securities had been refunded would be very high and return to other bondholders would be almost nothing 11

5. If Section 86A is construed to permit such discrimination it would be very unfair to all persons who hold special assessment bonds payable out of unextended special assessments 12

6. If the law had been in effect at the time the bonds were issued bondholders might have purchased bonds in a different manner. The enactment of Section 86A, therefore, puts the bondholders in a position of facing a set of conditions which were not possible and could not have possibly been contemplated under the law when their bonds were issued.. 12-13

7. To require 75% of the holders of outstanding securities to join in a petition as a condition precedent to extension and refunding is unreasonable. It is unfair to the bondholders of special assessments where the securities are scattered and where it is, therefore, difficult to get 75% of the holders to take a single action together 17

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Hunter and Co. Inc., respectfully petitions this Court for the issuance of a Writ of Certiorari to review a judgment of the Supreme Court of the State of Illinois, entered on February 18, 1941, affirming a judgment of the County Court of Cook County, Illinois, and files herewith a certified copy of the Complete Transcript of the Record in said cause and a Brief in support of this Petition:

Summary and Short Statement of Matter Involved.

In 1927 a proceeding was filed in the County Court of Cook County for the confirmation of Bellwood Special Assessment Number 100, a special assessment levied for

the purpose of curbing, grading, draining and paving certain streets in the village, and on February 7, 1928 an order was entered in the County Court confirming said special assessment. The assessment was divided into ten annual installments and bonds were issued in 1928 to anticipate Collection of the deferred installments of said assessment. The real estate against which said assessment was levied remained largely vacant and the bonds and assessments remained substantially unpaid. H. G. Goelitz Company was and still is the holder and owner of approximately $80,000.00 in principal amount of said special assessment bonds. In May, 1940 H. G. Goelitz Company being the holder of more than 75 per cent of the bonds, petitioned the Village of Bellwood to pass an ordinance to extend the unpaid installments and refund the securities payable therefrom and to petition the County Court for confirmation thereof. At this time there were levied and payable from the same property as that against which Special Assessment 100 was levied, four other special assessments, being for water, sanitary sewer, lights and storm sewer. The installments of these warrants also remained substantially unpaid and the bonds due from these assessments remained likewise substantially unpaid. On May 8, 1940 the Village of Bellwood acting upon the petition of H. G. Goelitz Company passed an ordinance providing for the extension of the time of payment of the unpaid installments and for the refunding of the securities of Bellwood Special Assessment Number 100 and on May 13, 1940 the village filed its petition in the County Court to confirm such extension and refunding of Bellwood Special Assessment Number 100, presuming to act under Section 86A (Chapter 24, Paragraph 792A, Illinois Revised Statutes of 1939) of an Act Concerning Local Improvements. This section was added to the Local Improvement Act by amendment in 1933. (Laws of 1933, Page 231.) The

section is set forth in full in the Appendix on pages 21 to 25. Prior to the year 1933 no statute existed for the extension of unpaid special assessments or the refunding of securities issued to anticipate collection of the same. It is to be noted that the statute above described was not in effect at the time the bonds involved herein were issued in 1928 nor was there any statutory provision whatsoever in effect for extension of any special assessments or refunding of any special assessment bonds.

Hunter and Company, Inc., an Illinois corporation, the Objector and Appellant herein is the owner of the beneficial interest in two lots covered by Bellwood Special Assessment 100 and involved in the extension and refunding proceedings, said lots being described in the assessment roll attached to and made a part of the petition. Hunter and Company, Inc., is also the owner of bonds and interest coupons aggregating approximately $6,000.00 and payable from special assessments for water, sanitary sewers, lights and storm sewers which assessments were levied againt and payable from the same real estate as covered by Bellwood Special Assessment Number 100. The unpaid installments of these assessments were also past due and substantially unpaid. The unpaid amounts of the latter four special assessments combined roughly equals the amount of the unpaid assessment for Bellwood Special Assessment Number 100 as to the average lot against which the assessments are levied.

Hunter and Company filed objections to the confirmation of the extension and refunding contending that the above section 86A is unconstitutional and void.

The County Court overruled the objections finding the Statute constitutional; but found that the installments of said Special Assessment 100 ought to be extended and an order was entered so providing.

Hunter and Co., Inc., then appealed to the Supreme Court of the State of Illinois from the order overruling the objections and ordering the extension and refunding and the Supreme Court affirmed the order of the County Court.

Basis for Jurisdiction of the United States Supreme Court.

The questions herein submitted are subject to review in the Supreme Court of the United States for the reason that the refunding statute involved in the above entitled cause violates the Constitution of the United States of America in the following respects:

1. It deprives the petitioner herein of property without due process of law in violation of Section 1 of the Fourteenth Amendment.

2. It is retroactive in nature and as such impairs the obligation of contract in violation of Section 10 of Article 1.

3. It makes an unreasonable and arbitrary classification thus depriving the Objector herein of the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment.

Questions Presented.

1. Whether Section 86A, being the statutory section relied on by the Village of Bellwood, deprived the objector of its property without due process of law by making the bonds owned by it of questionable value.

2. Whether Section 86A impaired the obligation of contract in making less valuable the bonds owned by the Objector.

3. Whether Section 86A is unconstitutional in creating an unreasonable and arbitrary classification between bond holders.

Reason Relied On for the Granting of the Writ of Certiorari.

1. The application of Section 86A in the instant case violates the Constitution of the United States of America in that it impaires the obligation of contract and deprives the Objector and other bondholders in similar cases of property without due process of law.

2. Section 86A is unconstitutional and void because it set up an unreasonable and arbitrary classification and deprived the Objector of its property in violation of the Constitution of the United States of America and denied to it the equal protection of the laws.

Respectfully submitted,

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MARSHALL S. HOWARD,
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